Supreme Court, U.S.
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No. 94-819

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1994

STEPHEN C. TASSIO,

Petitioner,

V.

WILLIAM SOPER, ROBERT F. FRAPPIER, MICHAEL W McMANUS, ROBERT MARIS, ROBERT DAY, MARTHA RITTER, KISLAK NATIONAL BANK, KISLAK MORTGAGE SERVICE CORPORATION, INDIVIDUALLY, JOINTLY and SEVERALLY,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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CERTIFICATE OF INTERESTED PARTIES

THE UNDERSIGNED counsel of record certify that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualifications or recusal.

1. Stephen C. Tassio, Petitioner and plaintiff below;
2. William Soper, Appellee;
3. Robert F. Frappier, Appellee;
4. Michael W. McManus, Appellee;
5. Robert Maris, Appellee;
6. Robert Day, Appellee;
7. Martha Ritter, Appellee;
8. Kislak National Bank, Appellee;
9. Kislak Mortgage Service Corporation, Appellee;
10. Old Republic Title Insurance Company.

The following law firms and counsel are presently involved in this case:

11. McCauley, Macdonald, Love & Devin;
12. G. Roland Love;
13. David J. Metzler;
14. Haynie, Higier, Maris & Foxman, P.C.;
15. Robert Maris

I.
STATEMENT OF THE JURISDICTION

As stated in the District Court's Order, and affirmed by the Fifth Circuit, the Federal Courts lack subject matter jurisdiction over the claims asserted by the Petitioner, therefore this Court also lacks jurisdiction. However, because the Fifth Circuit affirmed the District Court's Order, this Court has jurisdiction under 28 U.S.C. §1254.

II.
QUESTION PRESENTED FOR REVIEW

Whether the Fifth Circuit erred in affirming the District Court's ruling that the District Court had no subject matter jurisdiction over the Petitioner's claims.

III.
STATEMENT OF THE CASE

The present case involves a suit brought by Petitioner Stephen C. Tassio challenging a judgment entered by a Justice of the Peace Court located in Richardson, Texas, and appealed to County Court at Law No. 4 of Dallas County, Texas. Petitioner filed an action in a United States District Court against all of the Respondents, seeking to set aside the state court judgment and to return title and possession of certain property to Petitioner. In addition, Petitioner sought one million dollars in damages from the Respondents for an alleged "theft by extortion" and for an alleged violation of Petitioner's constitutional right to due process and equal protection.

On September 24, 1993, Respondents Soper, Frappier, McManus, Maris, Kislak National Bank, and Kislak Mortgage Service Corporation filed a Motion to Dismiss. A separate Motion to Dismiss was also filed by Respondents Judge Robert Day and Justice Martha Ritter on October 12, 1993. On or about May 3, 1994, the District Court Judge Barefoot Sanders granted the pending Motions to Dismiss determining that the Court lacked subject matter jurisdiction over Petitioner's claims and entered a Final Judgment dismissing all of Petitioner's claims with prejudice.

On September 21, 1994, the Fifth Circuit affirmed the ruling of the District Court.

IV.
SUMMARY OF ARGUMENT

The Fifth Circuit was correct in affirming the District Court's conclusion that no subject matter jurisdiction over Petitioner's claims existed because such claims were "inextricably intertwined" with the state court judgment and Petitioner was merely seeking to reverse a state court ruling. Reed v. Terrell, 759 F.2d 472, 473-74 (5th Cir. 1985).

V.
ARGUMENT

The question raised by Petitioner is not new. In fact, the Fifth Circuit previously decided a case which is very similar to the case at hand. In the case of Reed v. Terrell, 759 F.2d 472(5th Cir. 1985) two pro se appellants filed a claim in Federal Court essentially complaining of a judgment from a state court. The appellants each claimed that an award of fees to their ex-wife's attorney constituted a violation of their constitutional rights of due process and equal protection. The appellants named as the defendants the two attorneys who received the awards of attorneys' fees, the District Court Judge who issued the orders awarding the attorneys' fees, the District Clerk who filed the orders awarding attorneys' fees, and the State Bar of Texas. The appellants contended that all these parties had conspired to deny the appellants their constitutional rights. The District Court dismissed the Complaint, upon proper Motion, concluding the Court had no subject matter jurisdiction.

The Fifth Circuit determined that the District Court did not err in dismissing the appellants' action, reasoning that a party could not seek reversal of state court judgment in a federal court by "simply... casting his Complaint in the form of a civil rights action." Reed, 759 F.2d at 473. Because the "essential relief" sought by the appellants was a reversal of the state court judgment, the District Court Complaint was determined to be an "attempt to collaterally attack the validity of" the judgment entered by a state court. Id. Where a party's pleadings and arguments are "inextricably intertwined" with a state court order, a dismissal for want of jurisdiction is proper. Id. at 473-74.

In the case at hand, the Petitioner is also seeking to collaterally attack the judgment of a state court by claiming his constitutional rights have been violated. The first paragraph of Petitioner's First Amended Original Complaint states as follows:

> 1A. Plaintiff has substantially been denied due process and equality under the Law in the lower Courts in an act or acts of collusion and conspiracy perpetrated by the Defendants who have committed Theft by Extortion of the Plaintiffs [sic] land and home from the Plaintiff.

Petitioner's complaint sets forth allegations asserting that Petitioners have combined in a conspiracy to "disseise" through the use of a state law forcible entry and detainer action. As such, Petitioner's complaints are no more than a "collateral attack" on the validity of the ruling of the Justice of Peace Court and the County Court at Law. In such circumstances, "the United States District Court has no authority to review the final judgment of a state court in judicial proceedings." District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 103 S. Ct. 1303, 1315, 75 L. Ed.2d 206 (1983). The District Court's decision to dismiss for want of prosecution was correct and should be affirmed by this Court. *See also* Rives v. Franklin Life Insurance Co., 792 F.2d 1324, 1328 (5th Cir. 1986) ("[F]ederal courts do not sit in review of state court decisions on matters of state law.")

Petitioner fails to state any reason why this Court should grant certiorari. Petitioner's arguments are no more than an attack on fundamental jurisdictional issues which do not warrant the attention of this Court.

CONCLUSION

Respondents Soper, Frappier, McManus, Maris, Kislak National Bank, and Kislak Mortgage Service Corporation request that this Court affirm the ruling of the District Court on the grounds that the District Court's ruling on the Motion to Dismiss was correct.

Respectfully submitted,

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